

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 03-111V

Filed: February 4, 2009

Not To Be Published

MARY LOUISE O'GRADY and
TERENCE AUGUSTINE O'GRADY,
parents of TIMOTHY JOSEPH O'GRADY,
a Minor
Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES
Respondent.

Petitioners' Motion for a Decision
on the Record; Insufficient Proof
of Causation; Vaccine Act Entitlement;
Denial Without Hearing

DECISION¹

On January 22, 2003, petitioners filed a Short-Form Autism Petition For Vaccine Compensation in the National Vaccine Injury Compensation Program("the Program").² The petition alleges, by use of the special "Short-Form" developed for use in the context of the Omnibus Autism Proceeding, in effect that various vaccinations injured Timothy. The information in the record, however, does not show entitlement to an award under the Program.

¹Because this decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. *Id.*

²The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C.A. § 300aa of the Act.

On June 10, 2008, petitioners filed a Motion for a Decision on the Record.³ Petitioners assert they “are aware that the evidence of record in this case does not support a finding that Timothy is entitled to compensation in the Vaccine Program.” Petitioners’ Motion for a Decision on the Record at 1. Accordingly, petitioners request the undersigned dismiss the above-captioned petition. Id.

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter “the Program”), petitioners must prove either 1) that Timothy suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of her vaccinations, or 2) that Timothy suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). The undersigned’s examination of the record did not uncover any evidence that Timothy suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Timothy’s alleged injury was vaccine-caused.

Under the Act, petitioners may not be given a Program award based solely on the petitioners’ claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). In this case, because there are no medical records supporting petitioners’ claim, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion.

Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate either that Timothy suffered a “Table Injury” or that his injuries were “actually caused” by a vaccination. **Thus, the court must dismiss this case for insufficient proof. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

s /George L. Hastings
George L. Hastings, Jr.
Special Master

³ The undersigned notes petitioners’ Motion was filed electronically and docketed by petitioners’ counsel as a “Motion to Voluntarily Dismiss pursuant to Rule 41(a).” A staff attorney in this office contacted the parties and petitioners’ counsel indicated the Motion was filed incorrectly and he was not seeking relief pursuant to RCFC 41(a), but rather was seeking a “dismissal decision” through a Motion for Decision on the Record.

The undersigned further notes that due to an administrative error, petitioners’ Motion for Decision on the Record, as well as a letter to the clerk filed on September 17, 2008, were only recently brought to the undersigned’s attention.